

9 FAM 40.24 Notes

9 FAM 40.24 N1 Ineligibility Under INA 212(a)(2)(A)(i)(I) and INA 212(a)(2)(D)

9 FAM 40.24 N1.1 Conviction Under Statute Defining Prostitution

(TL:VISA-137; 4-1-96)

A conviction under a statute which precisely defines prostitution will not render an alien ineligible under INA 212(a)(2)(D) unless the record of conviction shows or it *is otherwise* reasonably established that the alien had engaged in prostitution. On the other hand, such a conviction would bring the alien within the purview of INA 212(a)(2)(A)(i)(I) (because prostitution is a crime of moral turpitude) unless the sentencing clause is applicable. The sentencing clause would not be applicable if the record showed or the consular officer would be justified in concluding on the basis of an admission by the alien or other evidence that the alien had committed another act of prostitution or other act involving moral turpitude.

9 FAM 40.24 N1.2 Conviction Under Broad Statute Encompassing Several Crimes

(TL:VISA-46; 8-26-91)

A person might be convicted under a statute so broad in content as to encompass within it, for example, the crimes of vagrancy, disorderly conduct, loitering for the purpose of prostitution, and prostitution. Such a conviction would generally not involve moral turpitude within the meaning of INA 212(a)(2)(A)(i)(I) because of the indivisibility of the pertinent statute. However, the evidence of record might be such as to prompt the consular officer to question the alien along lines that would make possible a determination of the applicability of INA 212(a)(2)(D) to the case.

9 FAM 40.24 N2 10 Year Statute of Limitation

(TL:VISA-85; 10-1-93)

The Immigration Act of 1990 amended the predecessor provisions of INA 212(a)(12) by adding the 10 year statute of limitations. If the nonimmigrant or immigrant visa applicant has not engaged in prostitution or has not attempted to procure or has not procured persons for prostitution or has not received proceeds from prostitution, for ten years preceding the date of application for a visa, entry, or adjustment of status, the provisions of INA 212(a)(2)(D) do not apply. It should be noted that INA

212(a)(2)(D)(iii) does not extend the 10 year statute of limitations to aliens who have engaged in other unlawful commercialized vice.

9 FAM 40.24 N3 Immigrant Applicants for Waivers Under INA 212(h)

(TL:VISA-85; 10-1-93)

An alien who is ineligible under INA 212(a)(2)(D) and is the spouse, parent, son, or daughter of a U.S. citizen or of a permanent resident alien is eligible under INA 212(h) to apply for a waiver of ineligibility. [See § 9 FAM 40.21(a) N13 for detailed waiver information and procedures.]